IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

Crl.MC.No. 85 of 2004(A)

CC.196/1995 of JFCM-II, PUNALUR
CRA.138/1999 of III ADDL. SESSIONS COURT, KOLLAM

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PETITIONER/1ST ACCUSED:

SUDHAKARAN (ACHUTHEN SUDHAKARAN),
S/O.ACHUTHAN, KEEZHETHIL, ST. GEORGE LANE,
KUMARAPURAM, KADAKAMPALLY VILLAGE,
THIRUVANANTHAPURAM.

BY ADV. SRI.JACOB SEBASTIAN
SRI.A.RASHID

RESPONDENTS:

1. STATE OF KERALA, REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA FOR THE FOREST
RANGE OFFICER, PARUTHIPALLY FOREST RANGE.

2. PODIAN, S/O. GOPALAN, PARAKUDI LANE,
PALKULANGARA VILLAGE, TRIVANDRUM.

BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU
SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SRI.JIBU P THOMAS

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 08/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

Crl.M.C.No. 85 of 2004

ORDER

The petitioner is the first accused in C.C.No. 196/95 on the file of the Judicial First Class Magistrate's Court-II, Punalur. Himself along with the second accused in the case were tried for offences under Sections 40(2) and 57, read with Section 51 of the Wild Life Protection Act; were found guilty' were convicted and were ordered to be released on probation for one year under section 4 of the Probation of Offenders Act, on executing a bond for Rs.5,000/- with two solvent sureties each for like sums, to appear and receive sentence as and when required. They were also directed to pay a sum of Rs.3,000/- each as compensation to the aggrieved under Section 5 of the Probation of Offenders Act.

2. The petitioner/first accused did not prefer any appeal against the said conviction and release under the provisions of the Probation of Offenders

Act. The second accused filed Crl.A.No.138/99, assailing the conviction and his release under the provisions of the Probation of Offenders Act and vide Annexure -III judgment, the learned Additional Sessions Judge confirmed the conviction and remanded back the case to the trial court for fresh consideration of the sentence to be awarded against the accused, making the following observations:

> "While awarding the sentence the learned Magistrate had given maximum leniency. There is no evidence that the learned Magistrate had conducted any enquiry or had taken any evidence to prove the character or antecedents of the accused. They are aged 50 and 37 respectively. They had no case that they are suffering from any ailments. Then how and under what circumstance the learned Magistrate invoked Section 360 Cr.P.C. and released the accused as per the provisions of the Probation of Offenders Act has not stated. Under such circumstances, I think that this is a fit case to be remitted back for

the reconsideration of punishment."

Obviously, in view of the remand made by the learned Additional Sessions Judge, the learned Magistrate has to consider afresh as to whether and if so what is the sentence to be awarded to the accused in the case, namely, the second accused as also the petitioner/first accused.

3. The grievance of the petitioner/first accused is that he had not filed any appeal and the Sessions Court had not issued any notice to him calling upon him to show cause as to why his release under the provisions of the Probation of Offenders Act should not be interfered with and a direction be given to the court below to consider the sentence to be awarded against him as well. The contention of the petitioner, no doubt, is sound unless notice had been issued in suo-motu revision, if any, registered. The Sessions Judge could not have interfered with the release of the

petitioner on probation.

In the result, allowing this Crl.M.C. I set aside the judgment in Crl.A.No.138/99 on the file of the III Additional Sessions Court, Kollam, inasmuch as it relates to the petitioner/first accused. It is made clear that the learned Magistrate shall not proceed afresh in C.C.No. 196/95 against the petitioner/first accused.

8th August, 2007 (K.P.Balachandran, Judge)

tkv